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KAPLAN & GILMAN, LLP  
900 ROUTE 9 NORTH  
WOODBIDGE, NJ 07095

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**SEP 30 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Zubok et al. :  
Application No. 10/781,484 :  
Filed: February 18, 2004 : ON PETITION  
Attorney Docket Number: :  
532-3X7 :

This is a decision on the Petition to Accord Original Filing Date, filed June 25, 2004, requesting the above-identified application be accorded the filing date of February 18, 2004.

Background

Application papers in the above-identified application were filed on February 18, 2004. On May 20, 2004, the Office of Initial Patent Examination mailed a Notice of Omitted Item(s) in a Nonprovisional Application, indicating February 18, 2004, as the filing date, and notifying Applicants that drawing Figures 4a-4g described in the specification appeared to have been omitted from the application. The Notice set a two-month period for reply, with extensions of time available under 37 CFR §1.136(a).

Petitioner subsequently, on May 4, 2004, filed a Preliminary Amendment requesting that the Examiner review and enter drawing Figures 4a-4g.

Upon receipt of the Preliminary Amendment, the Office mailed an Updated Filing Receipt, wherein the filing date of the application was changed to the date of receipt of the Preliminary Amendment - May 4, 2004.

The Instant Petition

Petitioner files the instant Petition to Correct the Filing Date of the application to February 18, 2004.

The Manual of Patent Examining Procedure ("MPEP"), § 601.01(g) states that if an application is filed without all of the

drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

The mailing of a 'Notice of Omitted Item(s)' will permit the applicant to either: (1) promptly establish prior receipt in the USPTO of the drawing(s) at issue (generally by way of date-stamped postcard receipt (MPEP 503)) (by filing a petition under 37 CFR 1.53); (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date such submission as the application filing date (by filing a petition under 37 CFR 1.182); or (3) "accept the application as deposited in the USPTO [and not] respond to the 'Notice of Omitted Item(s)'" , thereby constructively accepting the application as deposited with this Office. Amendment of the specification is required . . . to cancel all references to the omitted drawing[s]. . . ." See MPEP 601.01(g).

In this instance, Applicant did not respond to the Notice. Instead, Applicant filed a Preliminary Amendment to the Examiner.

A review of the file reveals that the application as filed on February 18, 2004, was a complete application under 37 CFR 1.53(b) such that the application was correctly accorded the February 18, 2004 filing date.

Accordingly, the petition is GRANTED.

A refund of the petition fee has been scheduled.

The application is being forwarded to the Office of Initial Patent Examination for correction of the filing date to February 18, 2004, with the drawings filed on that date, and for the mailing of a corrected filing receipt.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.



Derek L. Woods  
Petitions Attorney  
Office of Petitions